IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WA.No. 2768 of 2007

AGAINST THE JUDGEMENT IN WPC.30888/2007 Dated 18/10/2007
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APPELLANT/PETITIONR:

P.C. THAHIR,
KANHIRANDY TRADERS,
S.BATTERY.

BY ADV. SRI.PREMJIT NAGENDRAN
SRI.P.REGHUNATH

RESPONDENTS/RESPONDENTS:
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1. AGRICULTURAL INCOME TAX &
COMMERCIAL TAX OFFICER,
S.BATTERY.

2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
WAYANAD AT KALPETTA.

3. DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
KOZHIKODE.

4. INSPECTING ASSISTANT COMMISSIONER,
WYNAD.

BY SR. GOVT. PLEADER SRI. MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No. 2768 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

H.L.DATTU, CJ,

Questioning the correctness or otherwise of the order passed by the learned Single Judge in W.P.(C) No.30888 of 2997 dated 18th October, 2007, the petitioner in the writ petition has filed the present appeal.

2. By the impugned order, the learned Single Judge infact has granted more relief than the petitioner expected.

3. In the writ petition filed, the petitioner, who is a dealer, had called in question the order passed by the Deputy Commissioner of Commercial Taxes in exercise of his powers under Section 35 of the Kerala General Sales Tax Act ('KGST Act' for short) (Ext.P4) and the consequential order passed by the assessing authority for the assessment year 1999-2000 dated 24.3.2007 (Ext.P6).

4. The consequential relief that was asked is to quash the revenue recovery notice issued by the Recovery Officer pursuant to the order of assessment passed.

5. If for any reason, the petitioner was aggrieved by Ext.P4 order passed by the Deputy Commissioner of Commercial Taxes in exercise of his powers under Section 35 of the KGST Act, the petitioner ought to have questioned the correctness or otherwise of the said order before the Tribunal. That has not been done by the assessee for the reasons best known to him.

6. In Ext.P4 order the Deputy Commissioner of Commercial Taxes had directed the assessing authority to pass a fresh order of assessment for the assessment year 1999-2000 after affording an opportunity of hearing to the petitioner. The assessing authority, after giving such an opportunity, has now passed the assessment order for the assessment year 1999-2000 dated 24.3.2007. Petitioner, being aggrieved by the said orders of assessment, has questioned the correctness or otherwise of the same before the First Appellate Authority. Yet again, for the reasons best known to him, the petitioner has not filed any application before the First Appellate Authority for grant of any interim prayer.

7. Since the assessment order is already passed, the consequential demand notice is issued by the assessing authority. We cannot take exception to the consequential demand notice for the sole reason that once an order of assessment is passed, it is expected of the assessing authority to issue a demand notice to recover the amounts due under the assessment order.

8. The learned Single Judge, taking a very sympathetic view of the matter has only directed the petitioner to pay quantified tax liability and 50% of the interest demanded.

9. Having gone through the order passed by the learned Single Judge and also the facts and circumstances pleaded in the case, we are of the firm opinion that the learned Single Judge has not committed any error

whatsoever, which would call for our interference. Accordingly, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.